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Jurisdictional Conundrum in Digital Banking Frauds: Reinvestigation of the Effectiveness of International Conventional Laws *vs*. Contemporary Approaches on Cyberspace

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Abstract: Using a digital banking platform is crucial and unavoidable and as a result, it is essential to think about the possible legal repercussions of the expansion and development of electronic banking. However, the absence of online dispute-resolution systems will pose a significant barrier to expanding electronic banking. With this in mind, it proposes that the expansion of electronic banking can be maximized by adopting an online alternative dispute resolution (OADR) system, which it claims will replace traditional forms of ADR such as arbitration and mediation. This study contends that the potential for and methods of resolving conflicts arising from online activity, especially in the commercial setting, has expanded in recent years. Alternative dispute resolution mechanisms are much more critical than ever since the Internet has quickly made it possible to undertake minor transactions across jurisdictional borders. This paper makes a strong case for the use of OADR systems in e-commerce and cyberwarfare jurisdiction, and it puts forth the idea that rapidly developing digital technological frauds, especially in the banking sector, are essential in giving internet users access to facilities for dispute resolution, mainly when stakeholders are situated in various jurisdictions.

Keywords: Alternative dispute resolution. Jurisdiction. Electronic banking. Electronic commerce. Transaction.

Introduction

The terminology "online alternative dispute resolution" (OADR) encompasses the use of technological innovations, either wholly or in part, as a platform through which one can carry out Alternative Dispute Resolution (ADR) procedures to resolve economic conflicts that emerge from utilizing the Internet as a source for carrying out the electronic banking transactions. A private neutral oversees these processes, and they follow established guidelines. Any procedure or mechanism for resolving a dispute that relies exclusively on the allegation of competent jurisdiction is invalid. Instead, it depends on the principle of procedural justice. A proper jurisdiction is also required for the phrase "acting fairly", which goes outside the realm of procedures. It is a fair process to obtain this permission throughout the dispute resolution procedure by espousing clear and written notice and affirming competent sovereignty.[1] This school of thought contends that the insinuation of appropriate jurisdiction and the integrity of the procedures are two interrelated elements that determine the legitimacy of OADR. However, while discussing the validity of OADR, it is essential to distinguish between the impact of jurisdiction on the process and the impact of fairness.[2] Implementing adequate cross-border settlement systems is a growing priority in E.U. law. In its April resolution, the European Parliament emphasized the need to ease cross-border issues for individual citizens. Before this resolution, the European Commission published a Green Paper titled "Access to Justice and the Resolution of Consumer Disputes in the Single Market." This paper contains several suggestions for settling international consumer issues. Among the proposed improvements was a streamlined process for handling complaints. The European Commission staunchly supports online dispute resolution (OADR) platforms. The relevance of alternative dispute resolution (ADR) and the Internet has been highlighted in recent European policy initiatives regarding electronic commerce, legal authority, and online consumer protection.[3] The innovative deployment of information technology is given priority as an integral part of ADR programs. Similarly, the E.U. Commission has acknowledged the importance of evolving information technologies in expediting dispute resolution for Internet users, especially when the litigants are in different countries or jurisdictions.[4]

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1 Gibbons, L., *Private Law, Public Justice: Another Look at Privacy, Arbitration, and Global E-Commerce*, 15 Ohio ST. J. ON Disp. RESOL. 785 (2000).

2 Brian Pappas, *Online Court: Online Dispute Resolution and the Future or Small Claims*, 2008 UCLA J. L. & TECH. 2, 24-25 (fall) (discusses the implications of ODR for education and the importance of training future attorneys in this arena).

3 Juergen Noll, *European Community, and E-commerce: Fostering Consumer Confidence*, 9 ELECTRONIC COMM. L. REV. 207 (2002).

4 Jeremy Gilman, *Personal Jurisdiction and the Internet: Traditional Jurisprudence for a New Medium*, 56 BUS. LAW. 395, 400 (Nov. 2000).

Research Methodology

Since this research focuses on conceptual analysis, it has been conducted mainly through the doctrinal method and official data. For this investigation, these government statistics supplied a reliable data source that had also been authenticated. Other sources include commission reports, books, articles, statutes, case laws, pertinent internet pages, and online information. The researcher also participated in an interactive session with legal professionals to better understand their perspectives and viewpoints; nevertheless, such participation only produced qualitative and opinion-based data. This combination of research approaches was beneficial in conducting an in-depth investigation into the topic.

Legal Regimes Governing Jurisdictional Issues in Cyberspace

A public tribunal must have jurisdiction over a matter to hear and rule on. The parties obligated to abide by the judgment need to have some link with a government that bestows its authority upon the judiciary, and the individual who makes the decision must have been given the task of arbitrating the conflict. This stipulation is vital to the autonomy of nation-states. However, the rise of the Internet has muddied the waters of which laws apply and which governments have authority over what content appears online. Any choice of legal jurisdiction or point of interaction with the physical world will be arbitrary in the virtual world. The Internet is viewed in conventional legal theory as a tool for conducting business and exchanging information between geographically significant areas. Because of the inherently global nature of the Internet, it is very challenging to enforce the regulations of any particular geographical sovereign to acts that take place upon that.[5] The ADR system aims to address issues resulting from encounters and trans-jurisdictional connections so that the mold is expeditious and includes little interference with country law and nation.[6] Because ADR utilizes tactics that can be deployed across the procedural or substantial jurisdictional framework, it is an effective tool for resolving cross-border commercial disputes over the Internet. ADR allows for the processing of electronic cross-border transactions without the requirement to harmonize divergent legal systems. Regarding a federal law established through state legislation, ADR, also known as alternative dispute resolution, gives more procedural flexibility than traditional litigation. Once the parties have reached a settlement to resolve their differences through arbitration, the arbitrator will have

5 E. Leahy & C. *Bianchi, The Changing Face of International Arbitration*, 17 J. INT'L. ARB. 56 (2000).

6 Frank Sander & Steven Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure,* 10 NEGOTIATION J. 49 (1994).

exclusive and final jurisdiction over resolving any disputes that may arise between them. This is one of the primary benefits of collective bargaining as a form of dispute resolution instead of litigation. WIPO has taken note of the benefits of arbitration as a means of resolving disputes involving many jurisdictions with a minimum of hassle.[7] The World Intellectual Property Organization confirmed that it is an internationally recognized process. It has been stated by the OECD that "ADR has the potential to provide an acceptable mechanism which can strengthen parties' recourse to adjudication that an international framework be built to defend digital users at in different modes of trade".[8] Therefore, consensus-based systems must be emphasized in the OADR-style cyberspace revolution. From this vantage point, OADR has the potential to solve the Internet's jurisdictional problem by envisioning and adjudicating disputes outside of the purview of any one state's judicial authority. The legislation that makes it possible to adjudicate the issues of digital disputes might be considered a universal authority that should be decided by OADR on a particular circumstance approach by finding a satisfactory solution to the challenging problem presented by this law.[9]

The Necessity of Technical Capability in Adjudicating the Cyberspace Issues

- Establishing competence and skill in the examination of electronic evidence and its admissibility in legal proceedings.
- By making the required changes to substantive and criminal procedural legislation and bringing them into conformity with relevant global agreements, domestic legislative cybercrime frameworks may be developed and enforced in a way that respects international law and human rights norms.[10]
- Learning how the diverse legal frameworks worldwide affect law enforcement agencies' abilities to work together is crucial for ensuring global security.
- The timely exchange of information for attribution requires developing and effectively using investigative and attribution skills, such as technology, and promoting innovative working models with the private sector.

7 See S. Saxby, *The Roles of Government in National /International Internet Administration*, (discussing Internet governance) in Y. Akdeniz, C. Walker, & D. Wall, The Internet, Law, and Society, 27 (Pearson Education Limited, London, 2000).

8 David R. Johnson & David Post, *Law, and Borders: The Rise of Law in Cyberspace*, 48 STANFORD LAW REVIEW 1367, 1395 (1996).

9 Deborah Howitt, *Why the Battle Over Domain Names Will Never Cease*, 19 Hastings Comm. & Ent. LJ. 719, 729, (1997).

10 E. Leahy & C. Bianchi, *The Changing Face of International Arbitration*, 17 J. INT'L. ARB. 56 (2000).

- Law enforcement cyber competence development and major cyber institution cyber workforce gaps mitigation.
- We are keeping pace with technological innovations influencing cybercrime and the modus operandi of cybercriminals.

Scope of Quasi-Judicial Authorities for Resolving Disputes in Cyberspace

As the Internet has no physical borders, cyberspace jurisdiction is a relatively new branch of law. The question of whether or not an individual or company's online business activity makes them subject to corporate sovereignty in cases brought in another jurisdiction is increasingly being raised before the courts. Traditional concepts of personal jurisdiction are problematic when applied to the Internet. To determine whether personal jurisdiction exists over the Internet.[11] The courts must resort to statute and constitutional law, state long-arm statutes, and modern conceptions of the Fourteenth Amendment Due Process Clause. The Due Process Clause[12] "It requires that potential defendants be permitted to design their primary conduct with a reasonable guarantee that the activity will and will not produce them liable to an action", regardless of whether the defendant is a large corporation or a sole proprietor. Zippo Manufacturing Co. v. Zippo Dot Com, Inc. is the leading case on establishing jurisdiction over a defendant on the Internet. The court in Zippo considered whether the defendant's existence at an Internet address gave rise to personal jurisdiction in the plaintiff's state, where the defendant did not have any other substantial contacts. The plaintiff is a Pennsylvania corporation headquartered in Bradford, Pennsylvania, and it is best known as the maker of Zippo tobacco lighters. Plaintiff sued a California-based online news outlet that went by the names "zippo.com", "zippo.net", and "zipponews.com" for trademark infringement and false designation. If you wanted to use the defendant's newsgroup services, you had to fill out an online application and pay the defendant over the phone or via the Internet.[13] Once the payment was processed, the customers were given access to the newsgroup messages archived on the defendant's California server and a password to access the messages. As far as we can tell, the defendant's only contact with Pennsylvania was via the Internet. Almost 3% (or 2%) of the defendant's total paid subscriber base

11 ALAN REDFERN & M. HUNTER, Law and Practice of International Commercial Arbitration, 6 (Sweet & Maxwell, London 3d ed.1999).

12 Albert Jan Van Den Berg, *Non-Domestic Arbitral Awards Under the 1958 New York Convention,* 2 ARB. INT'L 191 (1986).

13 Henry H. Perritt, Jr., *Dispute Resolution in Electronic Network Communities*, 38 VILL. L. RKV. 349, 359 (1993).

of 140,000 were in Pennsylvania. The defendant contracted with seven ISPs in Penang to serve its.[14] [15] [16]

Recognize[17] the notion of adjudication proceedings floating in the international sky, unattached with any local legal system," he said. Before, only the arbitration's location determined whether an arbitral ruling was domestic or international. Even while the territorial criterion is obvious, the rules concerning the adjudication system are unclear and subject to interpretation. Therefore, the business sector needs to determine which awards the New York Agreement of 1958 will encompass. Article 1(1) of the New York Convention of 1958 defines a foreign award as one rendered in a country apart from the one seeking acknowledgment and execution.[18] Due to the vague definition of the domestic award, Article 1(1) is one of the most contentious provisions.[19] This Agreement applies to the acknowledgment and execution of arbitration decisions made in a State other than the one seeking acknowledgment and execution and emerging out of human or juridical inequalities among people, as indicated in Article 1. (1). It also applies to arbitral awards that are not acknowledged and enforced in the state where they were made since they are not domestic awards. A foreign award is "made, by an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention", according to section 100(1) of the English Arbitration Act of 1996. Nonetheless, the law guiding the arbitral process may impact the nationality of an arbitral ruling. A London adjudicator controlled by German law may be considered a domestic award in Germany. In contrast, a Paris award governed by a different legal system may be considered a foreign award. In the recent case of Minmetals Germany v. Ferco Steel Ltd., everything was found to exist in a core philosophy of international business arbitration in which all or none of the parties are foreign and that an award rendered abroad that incorrectly applies England law, for example, is unquestionably hardly an assault for England lawful norms as if it were brought to Europe for prosecution. This new trend attempts to prevent fading territorial relationships by emphasizing that global business adjudication would fail to weigh all verdicts equally.

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14 ROY GOODE, COMMERCIAL LAW, 1196 (Penguin Books Ltd. London, 2d ed. 1995).

15 Kenneth S. Dueker, *Trademark Law Lost in Cyberspace: Trademark Protection for Internet Addresses*, 9 HARV. J. L & TECH. 483 (1996).

16 Ainin Rasheed Shipping Corp. v. Kuwait Insurance Co., (1984) A.C. 50 (H.L.), 3 WLR 249.

17 Aurelio Lopez-Tarruella, *Cross-Border Disputes on Online Consumer Contracts in the European Union, the Brussels Convention, the Brussels Regulation and the Role of Alternative Dispute Resolution Systems*, 2 J. NETWORK INDUS. 231, 235 (2001).

18 Aurelio Lopez-Tarruella, *Cross-Border Disputes on Online Consumer Contracts in the European Union, the Brussels Convention, the Brussels Regulation and the Role of Alternative Dispute Resolution Systems*, 2 J. NETWORK INDUS. 231, 235 (2001).

19 Alan Redfern & Martin Hunter, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 71 (3rd ed. 1999).

Scope of online Dispute Resolution and Challenges in Adapting to Legal Regime

The conditions for Cyber Security are highly distinctive and vary depending on the threat scenario. The threat environment should be regularly updated to prevent increasing attacks. Collaboration among various firms is anticipated to facilitate the exchange of information regarding emerging threats and vulnerabilities, enhancing robust security measures and proactive measures against cyber attacks. Adopting a comprehensive approach is crucial for ensuring the security of Indian Cyberspace. The cyber security activities implemented during the XI plan period will be sustained and enhanced while introducing new initiatives that align with increasing risks and the changing technological landscape. Ensuring a secure Indian cyberspace necessitates the implementation of a comprehensive policy.[20] The digital protection operations of the XI plan period will be continued and strengthened, while new initiatives will be established in response to emerging threats and the evolving technological landscape. The primary distinguishing factors between ADR and OADR in terms of communication are media richness, encompassing the transmission of visual and linguistic cues, and interactivity, which pertains to the capacity for a smooth and uninterrupted flow of conversation. Media richness is unique because of the absence of visual signals, such as facial or bodily expressions, and verbal cues, such as tone or inflection, in online, text-based conversations. Although OADR offers convenience, the absence of visual and vocal cues can restrict the parties engaged in online negotiation.[21] They are compelled to rely solely on the content of the email message rather than indirect verbal and visual indications when making judgments. Therefore, email discussions could result in misinterpretations due to the limited presence of contextual indicators and the absence of opportunities for back-channeling or nonverbal communication to convey acknowledgment and comprehension.[22] Additional research suggests that in online negotiations, the emphasis is placed less on establishing a relationship or building rapport and more on completing the work and reaching an agreement or settlement. Research indicates that parties who utilize OADR procedures tend to have lower confidence levels after resolving a conflict than parties who employ ADR approaches. Moreover, there is a bias for parties to perceive adverse outcomes as the responsibility of the opposing party rather than simply as an unfortunate consequence. Research

[20] Duncan Bentley & John Wade, *Special Methods and Tools for Educating the Transnational Lawyer*, 55 J. LEGAL EDUC. 479, 479-83 (2005).

[21] DEAN PRUITT ET AL., Soc. CONFLICT ESCALATION, STALEMATE, AND SETTLEMENT (3rd ed., 2004); CHRISTOPHER W. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (3d ed., 2003).

[22] See Kathleen Goodrich & Andrea Kupfer Schneider; *The Classroom Can Be All Fun and Games*, 25 OHIO ST. J. ON DISP. RESOL. 87 (2009).

indicates that online negotiators are more prone to making assumptions about the other party's intentions due to the reduced presence of social cues and the decreased frequency of clarifying questions in the cyber environment. Studies have demonstrated that online communications cultivate an atmosphere that encourages suspicion, rivalry, and aggressive conduct. In contrast, in-person communication cultivates an atmosphere more favorable for establishing rapport and collaboration among the involved individuals. Studies indicate that Online Assisted Dispute Resolution (OADR) leads to parties adopting confrontational and competitive strategies due to a lack of foundation and social interaction.[23] Hence, utterances may be made carelessly or thoughtlessly without adequately considering the potential consequences of the statement. Therefore, parties may not respond to every point presented in a communication. Instead, they may selectively choose which aspects to discuss and allocate a significant portion of each communication to promoting their agenda, often neglecting to answer minor issues, clarifications, or concerns. This phenomenon has the potential to result in parties emphasizing their competing behaviors instead of cooperative actions. Online negotiations often result in reduced levels of cooperation, leading to fewer mutually advantageous agreements reached by the parties involved. In response to the proliferation of emails and the lack of natural rotation, parties tend to adopt a competitive approach and more assertive stances rather than actively seeking out potential mutually advantageous settlements.[24]

Integration of Fintech Regulations on Electronic Banking and Rights of Customers; Rule of Law and Human Rights in Cyberspace

Platforms for digital financial inclusion are becoming increasingly popular as tools for productivity expansion that also advance development objectives like gender equality and poverty alleviation. M-Pesa, which stands for "mobile money", was made possible by a public-private cooperation between the U.K.'s Department for International Development, Vodafone, and its holding company, Safaricom. M-Pesa is a cell phone payment processing platform.[25] It is among the most well-known financial digital platforms available today. Kenyans currently utilize M-Pesa, which

[23] Amy J. Schmitz, *"Drive-Thru" Arbitration in the Digital Age: Empowering Consumers Through Binging ODR*, 62 BAYLOR L. REv. 178, 225 (2010) [from now on Schmitz, "Drive-Thru" Arbitration in the Digital Age].

[24] See Susan Exon, *Maximizing Technology to Establish Trust in an Online, Non-Visual Mediation Setting,* 33 U. LA VERNE L. REV. 27, 63-65 (2011) (discussing how technology affects the "mediator's ability to engender trust").

[25] Shekhar Kumar, *Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost Intensive Litigation*, 27 J. MARSHALL J. COMPUTER & INFO. L. 81, 89 (2009).

was launched in 2007 and has seen phenomenal growth of over 70%. By combining social and economic analysis, feminist political, financial system research, and post-colonial literature, this study analyses M-inclusionary Pesa's regulatory structures and discusses their consequences for gender parity. It demonstrates that while these structures aid in bringing women into the official financial system, they fall short of addressing the gendered socio-economic disadvantages that lead to and perpetuate financial exclusion. The main component of the global development initiative is financial inclusion, which is marketed as a tool for long-term sustainable growth that will help accomplish the Sustainable Development Goals of the U.N. (SDGs).[26] Digital platforms are being praised by international organizations, governments, NGOs, and businesses for making it easier for people to access formal financial services, especially in developing nations with poor infrastructure and resources. The G20 Guidelines for Innovative Financial Inclusion, introduced after the 2008 financial crisis, strongly advocate financial innovation across fresh financial service delivery methods that may target the inaccessible, such as alternative channels and postal and retail store payment systems. These financial technology portals provide inexpensive and secure legal banking services to persons excluded from the official financial infrastructure and rely on institutional agreements between various actors. While academics acknowledge that M-success Pesa was an isolated phenomenon that could not be easily repeated, popular discourse in Kenya supporting digital financial inclusion is crucial to the government's national reform agenda.[27] Because there were few regulatory restraints, M-Pesa rose to prominence. M-Pesa thrived in an environment while expanding swiftly and with essentially no competition. The expansion and independence of Safaricom were made possible by the absence of regulation. The management of M-Pesa established solid connections with regulators and elected leaders throughout time. The M-Pesa system would have to be regulated to maintain these ties. Being managed by mobile network operators rather than official financial markets regulation or a self-regulatory trade organization is a significant worry when assessing mobile money's impact in Kenya. M-Pesa and other digital financial services have never been regulated in advance; instead, decisions have been made in response to difficulties that were felt to arise. This strategy was referred to as "Test and Learn".[28] Before the official launch of M-Pesa, a Communications Law from 2006 acknowledged the ability of mobile phone

[26] Todd D. Leitstein, *A Solution for Personal Jurisdiction on the Internet*, 59 LA. L. REV. 565, 568 (1999).

[27] See Bandon Dunes L.P. v. DefaultData.com, World Intellectual Property Organization Administrative Panel Decision Case No. D2000-0431, available at http://arbiter.wipo. int/domains/decisions/html/2000/d2000-0431.html (last visited Oct. 1, 2007); Wal-Mart Stores, Inc. v. Walsucks & Walmart Puerto Rico, World Intellectual Property Organization Administrative Panel Decision Case No. D2000-0477, available at http://arbiter.wipo. int/domains/decisions/html/2000/d2000-0477.html (last visited Oct. 1, 2007)

[28] Christine Lecuyer-Thieffry & Patrick Thieffry, *Negotiating Settlement of Dispute Provisions in International Business Contracts: Recent Developments in Arbitration and Other Processes*, 45 Bus. Law. 577 (602) (1990).

devices to carry money and hold value through goods like airtime. This allowed M-Pesa to be governed as a payment system instead of by Kenya's banking rules. By 2012, Safaricom has added microcredit services to its mobile banking offerings. Financial intermediaries were developed to analyze transaction and savings data and create personal credit scores. These credit scores served as the basis for credit availability and cost. M-Shwari was created by Safaricom and the Central Bank of Kenya as a product ("CBK"), and in a little more than three years, it has 40 million users. As a result of this implementation, no new regulations were adopted. The CBK instead published "rules intended to reduce financial risks.[29] Most of these methods addressed problems like settlement risk when the flow of funds is hindered, operational risk mitigation, and liquidity risk. Kenya's regulatory strategy fails to address predatory practices from finance providers through the "Test and Learn" method. The CBK should have stepped in to impose regulations on online lenders.

Neither the Local Banking Act, Micro Finance Act, nor the Central Bank of Kenya Act designates digital credit providers as financial institutions. Furthermore, mobile lenders like Safaricom can change their passive regulatory reaction in December 2020 by classifying interest charges as "facilitation fees".[30] The Central Bank of Kenya Legislation Bill (also known as the "CBK Amendment Bill") was the name of the amendment, which is now being examined. The proposed legislation would include provisions allowing direct CBK regulation of digital financial services. If it becomes law, the CBK Amendment Bill would mandate that several digital financial credit companies seek licenses from the CBK to carry on with their activities or provide financial services.

Conclusion

Integrating ADR and OADR-themed classes and lectures into doctrinal law studies is the most effective approach for contemporary legal education due to two key factors. Incorporating Alternative Dispute Resolution (ADR) and Online Dispute Resolution (OADR) elements into the legal curriculum can expedite the legal profession's gradual adjustment to evolving global technology. Alternative Dispute Resolution (ADR) courses equip law students with the practical skills necessary for resolving issues, a practice that, based on statistical data, is more prevalent than

[29] Hunton & Williams v. Am. Distribut. Sys., Inc., World Intellectual Property Organization Administrative Panel Decision Case No. D2000-0501, available at http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0501.html (last visited Oct. 1, 2007) (addressing the problem of freedom of speech and trademark ownership rights).

[30] Paolo Contini, *International Commercial Arbitration: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 8 Am. J. Comp. L. 283, 292 (1959).

traditional court litigation. The prevailing nature of contemporary communication is that it predominantly occurs via online platforms. Integrating online dispute resolution (OADR) strategies into law schools' curricula would enhance the legal profession's ability to communicate with clients and opposing parties.[31] Modern day. Moreover, equipping law students with the necessary skills for Online Advancing Dispute Resolution (OADR) will motivate prospective lawyers to actively employ OADR techniques and develop a greater sense of ease when they commence their legal careers.[32] It took the collaboration of several law enforcement agencies, each needing the competence and capability to participate in a multi-agency, international investigation, to bring just some of these cybercrime offenders to justice.[33] This is an excellent illustration of the necessity for international collaboration to find and prosecute cybercriminals. It also highlights the global enforcement community's challenges when it requires years of cooperation, a significant budget, and numerous local and international agencies to effect just one component of a single cybercrime enterprise. Even with the improvements in fostering global cooperation against cybercrime, there are still enormous obstacles to overcome. Operational collaboration like this to accomplish prosecution is uncommon, and policymakers may only sometimes wholly comprehend the significant players' challenges in these investigations. However, avoiding superficial alterations or "cyber washing" is the biggest obstacle to a cybersecurity strategy aimed at human development. Formal commitment to the rule of law, fiscal prudence, and human rights protection cannot replace actual change and deployment in capacity development. Lawful mentoring, on the one hand, should occur within the framework of an ongoing partnership between corporate companies, intergovernmental groups, and international donors and rely on its capability to generate the perfect mixture of environmental cues to support a mortal advancement worldwide struggle against internet insecurity. Considerable attention to positive incentives (investment, membership in organizations, access to international networks) and deleterious punitive measures (naming and shaming, freezing investment) is required to stimulate anything, but the rule of constitution technical assistance in particular.

[31] See Michael Moffit, *Lights, Camera, Begin Final Exam: Testing What We Teach in Negotiation Courses*, 54 J. LEGAL EDUC. 91, (2004) (discusses the advantages and disadvantages of a student-analyzed negotiation video and ultimately advocates for this method over other in-class teaching methods).

[32] Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1 (2009).

[33] JANICE NADLER & DONNA SHESTOWSKY, NEGOTIATION, INFORMATION TECHNOLOGY, AND THE PROBLEM OF THE FACELESS OTHER, NEGOTIATION THEORY AND RESEARCH (L. Thompson ed., 2006).

Suggestions

Legality: Acts in cyberspace must be supported by laws that govern the behavior of public and private actors and decriminalize lawful and constructive behavior, for example, by ensuring a strict legal framework for undercover investigations of cybercrime cases, including the role of "white hat hackers."

Legal certainty: The rules that apply to cyberspace must be clear (e.g., they must address where criminal and civil law intersect), widely available (via public campaigns), and appropriately applied and prosecuted.

Preventing executive branch arbitrary behavior: Cyberspace-related policies must incorporate safety nets such as substantial permitted restrictions.

Public and private organizations that enforce security must maintain equity, rationality, and transparency. This is especially crucial when collaboration across several agencies is called for.

Access to justice: The law must be applicable, and there must be clear guidelines for gathering and admitting evidence. In this context, proactive steps include creating and using forensics to address the attribution issue. In that regard, it is crucial to ensure that regulations are made for the imprisonment and reintegration of convicted cybercriminals and that they are punished relatively and equitably.

Respect for human rights: All U.N. members agree that respecting human rights is an essential element of the rule of law and a separate goal. Non-discrimination and equality before the law: Cyberspace legislation must apply equally to all users.

States' positive and negative duties to respect, defend, and uphold human rights must be addressed in laws controlling cyberspace. This involves adhering to widely accepted human rights norms and considering how cyberspace laws may affect such rights.

Dilema jurisdicional em fraudes bancárias digitais: reinvestigação da eficácia das leis convencionais internacionais *vs.* abordagens contemporâneas no ciberespaço

Resumo: Usar uma plataforma de banco digital é crucial e inevitável e, como resultado, é essencial considerar as possíveis repercussões legais da expansão e do desenvolvimento do banco eletrônico. No entanto, a ausência de sistemas de resolução de disputas *on-line* representará uma barreira significativa para a expansão do banco eletrônico. Com isso em mente, propõe-se que a expansão do banco eletrônico pode ser maximizada com a adoção de um sistema de resolução alternativa de disputas *on-line* (OADR), o qual se afirma substituirá as formas tradicionais de ADR, como a arbitragem e a mediação. Este estudo argumenta que o potencial e os métodos para resolver conflitos decorrentes de atividades *on-line*, especialmente no contexto comercial, expandiram-se nos últimos anos. Os mecanismos de resolução alternativa de disputas são mais críticos do que nunca, já que a Internet tornou possível realizar transações menores transfronteiriças de forma rápida. Este artigo apresenta uma forte defesa do uso de sistemas OADR no comércio eletrônico e na jurisdição da guerra cibernética, e propõe a ideia de que as fraudes tecnológicas digitais em rápido desenvolvimento,

especialmente no setor bancário, são essenciais para proporcionar aos usuários da Internet acesso a facilidades de resolução de disputas, principalmente quando as partes interessadas estão situadas em diversas jurisdições.

Palavras-chave: Resolução alternativa de disputas. Jurisdição. Banco eletrônico. Comércio eletrônico. Transação.

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